

COMPLIANCE BOARD OPINION NO. 97-16

December 2, 1997

Michael Houck, President

The Open Meetings Compliance Board has considered your complaint concerning meetings held between the Wicomico County Council and various department heads on April 15, 1997. Your complaint alleges that during the meetings, which were not open to the public, various department heads made formal budget proposals to the County Council. Additionally, your complaint states that the County Council failed to prepare minutes of the meetings. In its response, the County Council essentially confirmed the facts underlying the complaint.

For the reasons stated below, the Compliance Board finds no violation of the Open Meetings Act.

I

Discussion

The Wicomico County Council was established by the Charter of Wicomico County, Article I, § 101-1, and is a “public body” subject to the Open Meetings Act. §10-502(h)(1)(ii) of the State Government Article. Nevertheless, the County Council contends that the Act was not applicable to the particular meetings in question because, as the Council put it, “the formulation of an expense budget based on consultation with various support staff such as department heads is an executive function.” Under §10-503(a)(1)(i), executive functions are generally excluded from the Act.

The Council’s position is supported by Maryland case law. In *Board of County Commissioners v. Landmark Community Newspapers*, 293 Md. 595, 446 A.2d 63 (1982), the Carroll County Commissioners discussed the preparation of that county’s budget in a meeting that was closed to the public. The County Commissioners had adopted a resolution that specified the process for budget development. Under the process, a budget officer and heads of county agencies would provide information and proposals to the County Commissioners, who would then develop the budget. Carroll County argued that “the actual preparation of a budget is an executive function of county government different from the process of approval, disapproval, or amendment of a budget which the Act classifies as a quasi-legislative function.” 293 Md.

at 602. While the Court of Appeals decided the case in the county's favor on other grounds,¹ the Court suggested that, had it reached the merits, it would have endorsed the distinction between budget preparation and budget approval. 293 Md. at 605.

The procedure for the formulation of the budget in Wicomico County is similar to the procedure described in *Landmark*. Under §703-1(a) of the Wicomico County Code, department and agency heads submit an estimate of revenues and expenditures. Then the Administrative Director prepares and submits a budget to the County Council. §406-1(3). At that point, the budget preparation process – an executive function – has ended, and the budget approval process – a quasi-legislative function – begins.² The proposed budget is made available for public inspection, public hearings are held, and the County Council formally adopts it. §703-1(e).

Because Wicomico County has no county executive, the County Council carries out a multitude of administrative functions that in other counties are supervised by the county executive. For example, if a county executive assembles a group of department heads on a regular basis, the group of officials would be the county's "counterpart" to the Governor's Cabinet such a meeting would not be subject to the Act. The result is no different where the multi-member executive head of county government – here, the Wicomico County Council – meets with department heads to discuss budget preparation. *See* Compliance Board Opinion 93-10 (October 15, 1993). *See also* Office of the Attorney General, *Open Meetings Act Manual* 4-5 (3d ed. 1999) (the Act would not apply to a meeting between the county commissioners in a county without a separate executive and the heads of the departments of county government).

¹ The Court held that the budget preparation meetings of the County Commissioners were part of the county's process of "appropriating public funds" and therefore could not be subject to a judicial enforcement action. 293 Md. at 607.

² The budget preparation process in Wicomico County is different from the situation where one public body considers a budget prepared by a separate and distinct public body. The review or examination of one public body's proposed budget by a different public body involves the process of "approving, disapproving, or amending a budget," which is a quasi-legislative, not an executive function. §10-502(j)(2). *See* Compliance Board Opinions 97-7 (May 13, 1997) and 97-2 (March 3, 1997).

II

Conclusion

In summary, because the meetings between the County Council and the department heads were not subject to the Act, the County Council was not required to open the budget meetings on April 15, 1997, or prepare minutes of those meetings.

OPEN MEETINGS COMPLIANCE BOARD

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